IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.8067 OF 2003

Shri Omprakash Ram Swaroop : Petitioner

(Orig. Defendant)

V/s.

Smt.Chanchalkumari Ascharjilal

Vacchar : Respondent

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Ms A.G.Bhaktwani for the petitioner.

Mr.Amol Mhatre i/b. Mr.P.K.Dhakephalkar for the respondent.

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CORAM : S.A. BOBDE, J.

March 9, 2005.

P.C.:

1. Rule, returnable forthwith.

Heard by consent.

2. The petitioner is the defendant who has suffered an ex parte decree dated 26.3.1997.

3. The respondent-landlady terminated the petitioner's tenancy by notice dated 5.7.1993. On 8.9.1994 summons was

served on the petitioner. Thereafter, an ex parte decree was passed. The petitioner filed an appeal on 8.10.2002 accompanied by an application for condonation of delay. The delay was about 66 months.

4. This application has been rejected by the lower appellate Court by an order dated 18.10.2003. This petition has been filed against that order.

5. Having heard the learned counsel for the parties, I am of view that the order rejecting the application for condonation of delay suffers from an error of law apparent from the face of the record. The lower appellate Court has totally disbelieved the petitioner’s version that there was no material to substantiate the contention of the respondent that the matter was being compromised. The learned counsel for the petitioner has referred to a receipt dated 1.10.2000 executed by the respondent-landlady under which she has accepted the rent for the period April 2002 to October 2002. This receipt is not denied by the respondent. This receipt has been rejected as evidence of compromise solely on the ground that it does not show that the petitioner paid the rent to the landlady "after the receipt of the notice of the suit". In my view, this vitiates the order and

constitutes a perversity. Obviously, it appears to be a case where talks of compromise took place between the parties. There is no reason why rent should have been paid by the petitioner and duly accepted by the respondent for the period from April 2000 to October 2000, unless there was some talk of compromise.

6. In the circumstances, the petition deserves to be allowed. The impugned order deserves to be set aside. The delay is hereby condoned. The appellate Court is directed to decide the appeal, as expeditiously as possible, and, in any case, not later than six months from the date the parties appear before it. The parties are directed to appear before the appellate Court on 30.3.2005. All contentions in the appeal are kept open.

7. The interim stay granted by the lower appellate Court to continue for a period of two months from today. The petitioner shall be at liberty to apply for interim relief to the District Court which shall decide the application on its own merits.

8. The rule is made absolute in the aforesaid terms.

Sd/-

S.A. BOBDE, J.